DOUBLE EMPLOYMENT OF AGENT. — There is a difference of opinion on the question as to whether the same agent may ever be employed by the buyer and the seller in a single transaction. Upon this point the charge given in *Gracie* v. *Stevens*, New York Law Journal, Dec. 29, 1899, seems accurately to present the test applied in New York. The plaintiff had acted as agent both for the buyer and for the defendants, who were the sellers. The jury were told that, if the plaintiff was employed by the defendants merely to find a buyer, he was entitled to their verdict; if, however, his acting for the defendants required the slightest use of his own discretion, he could not recover. This test is well recognized in New York. *Empire State Ins. Co.* v. *American Central Ins. Co.*, 138 N. Y. 446. In many jurisdictions, however, it is disregarded. *Jansen* v. *Williams*, 55 N. W. Rep. 279 (Neb.): *Porter* v. *Woodruff*, 36 N. J. Eq. 174. See 9 HARVARD LAW REVIEW, 349.

On principle the New York test seems open to grave objections. It is a fundamental doctrine of agency that the relation between principal and agent is fiduciary in its nature. Whoever, therefore, is employed as an agent owes to his employer the utmost diligence in dealings in his behalf. This, of course, requires an intelligent business method on the agent's part. Now while in any case the business to be done may be simple and known in detail to the agent, there is always the possibility of an unexpected situation requiring the use of discretion. The possibilities of the principal case seem amply to illustrate the point. Granting that the plaintiff was employed merely to find a purchaser, two such may appear who are not equally responsible. Now, if he also be acting for the less responsible, the conflict of interests is apparent. He cannot, with the loyalty which he owes to the defendant, recommend the less responsible; nor can he, in good faith to the buyer for whom he is acting, do less than his utmost for him. In short, unless these contingencies are entirely disregarded, we can only say that, when one may act for one side in a perfectly mechanical capacity, he may also act for the other; but then the fiduciary nature of the former relation is gone, and the case is not one of real agency. There is no real agent who cannot use discretion in an unexpected situation. When both parties consent to a double employment, it is a different question; but it is to be regretted that the cases do not uniformly appreciate that the fiduciary relation between principal and agent is incompatible with a double employment of the agent.

LIABILITY FOR THE SPREAD OF FIRE. — The New York rule limiting liability for the spread of fire, negligently caused, to the damage resulting to abutting proprietors, has at length been put upon a basis which, though questionable, is at least consistent with itself. *Ryan* v. *N. Y. C. R. R. Co.*, 35 N. Y. 210, decided in effect that where fire was communicated by a defendant's negligence to the house of A, and thence to the adjoining house of B, the injury to B was, as a matter of law, the remote and not the proximate result of the negligent act. Subsequently this rule was limited strictly to the particular facts, and a recovery was allowed in the case of fires in the country. *Martin* v. *N. Y., O. & W. R. R.*, 62 Hun 181. The Court of Appeals has now decided, however, that such a rural non-abutting proprietor may not recover. Fire was communicated from the defendant's engine to rubbish negligently allowed to accumulate along the defendant's roadway, and thence burnt over the forest